

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 95-126
Table of Allotments,)	RM-8671
FM Broadcast Stations.)	
(Denison-Sherman, Paris, Jacksboro,)	
Texas, and Madill, Oklahoma))	
)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: December 30, 1998

Released: January 8, 1999

By the Chief, Policy and Rules Division:

1. The Commission has before it an Application for Review filed by Hunt Broadcasting, Inc. ("Hunt Broadcasting") directed to the staff Memorandum Opinion and Order in this proceeding. 12 FCC Rcd 10265 (1997). CarePhil Communications ("CarePhil") filed a Memorandum in Support of Application for Review. Steve Landtroop, Inc. ("Landtroop") filed an Opposition to Application for Review. Hunt Broadcasting filed a Motion to Strike and Reply to Opposition to Application for Review.¹ For the reasons discussed below, we will dismiss the Application for Review.

Background

2. At the request of Hunt Broadcasting, licensee of Station KIKM (formerly Station KDVE), Channel 269C3, Denison-Sherman, Texas, the Notice of Proposed Rule Making and Order to Show Cause in this proceeding proposed the substitution of Channel 269C1 for Channel 269C3 at Denison-Sherman, and modification of the Station KIKM license to specify operation on Channel 269C1. 10 FCC Rcd 8303 (1995). In order to accommodate a Channel 269C1 allotment at Denison-Sherman, Hunt Broadcasting also proposed three channel substitutions. In addition to the proposed substitution of Channel 252A for Channel 269A at co-owned Station KAIH, Jacksboro, Texas, Hunt Broadcasting proposed the substitution of Channel 282C2 for Channel 270C2 at Paris, Texas, with a modification of the Station KBUS license to specify operation on Channel 282C2 at Paris, and the substitution of Channel 273A for Channel 272A at Madill, Oklahoma, with a modification of the Station KMAD license to specify operation on Channel 273A at Madill. Neither the licensee of Station KBUS nor the licensee of Station KMAD responded to the Order to Show Cause and were thus deemed to have consented to the proposed license modifications pursuant to Section 1.87 of the Rules. The Report and Order granted the proposed upgrade at Denison-

¹In its Motion to Strike directed to the Landtroop Opposition to Application for Review, Hunt Broadcasting notes that the Opposition was filed on September 5, 1997, instead of September 3, 1997, required by Section 1.115(d) of the Rules. Even though the Opposition was not filed with 15 days of the filing of the Application for Review as required by Section 1.115(d), this untimeliness has not delayed resolution of this proceeding or otherwise prejudiced any party. We will consider the Opposition in order to resolve this proceeding on the basis of a complete record.

Sherman and substituted the channels at Jacksboro and Paris, Texas, and Madill, Oklahoma as proposed in the Order to Show Cause. 11 FCC Rcd 5316 (1995). As the benefiting party, Hunt Broadcasting was required to reimburse the licensees of Station KBUS and Station KMAD for the legitimate and prudent costs of changing their respective channels. Circleville, Ohio, 8 FCC 2d 159 (1967).

3. CarePhil, licensee of Station KBUS, Paris, Texas, filed a Petition for Reconsideration directed to the Report and Order. In its Petition for Reconsideration, CarePhil argued that in view of the fact that the Order to Show Cause was mistakenly served on the former licensee of Station KBUS, it cannot be deemed to have consented to the modification of its license. Nevertheless, CarePhil stated its willingness to change its channel. To this end, CarePhil contended that Hunt Broadcasting had not followed through on its commitment to reimburse CarePhil for the reasonable expenses that would be incurred in changing its channel. In its Opposition, Hunt Broadcasting noted that the application it filed to implement its upgrade on Channel 269C¹ meets the minimum separation requirements with respect to the existing Station KBUS operation on Channel 270C2. As such, Hunt Broadcasting argued that the CarePhil Petition for Reconsideration was moot because it was no longer necessary for Station KBUS to change its channel and that it should therefore not be required to reimburse CarePhil. In the Memorandum Opinion and Order, we rejected the Hunt Broadcasting argument. In that action, we determined that the channel substitution at Paris continued to be necessary in order for Channel 269C1 at Denison-Sherman to be a fully spaced allotment. In view of the Hunt Broadcasting willingness to meet its reimbursement requirement under Circleville, Ohio, *supra*, we determined that the matter was best left to a resolution through the good faith negotiations between the parties. Therefore, we denied the Petition for Reconsideration.

4. In its Application for Review, Hunt Broadcasting contends that review is warranted "due to the need to revise or clarify the staff's policy with regard to channel changes which are ordered but are not required to be made to effectuate" its proposal in this proceeding. At the outset, our Memorandum Opinion and Order accurately reflected Commission policy under Circleville regarding the need for a channel change at Paris, Texas, and the Hunt Broadcasting requirement to reimburse CarePhil. However, the Hunt Broadcasting Application for Review was premised on a reimbursement requirement resulting from Station KIKM modifying its license to specify operation on Channel 269C1 at Denison-Sherman which required Station KBUS and Station KMAD to change their respective channels. A subsequent modification of the Station KIKM license to specify operation on Channel 269C at Azle, Texas, which is described in greater detail below, has avoided the need for either Station KBUS or Station KMAD to effectuate a change of channel. For the reasons discussed below, we will return Station KBUS and Station KMAD to their former channels. Because the Hunt Broadcasting Application for Review concerned these channel changes at Paris and Madill as authorized in this Report and Order which are not now required, it is no longer necessary to consider this Application for Review in the context of this proceeding.²

Paris, Texas

5. In a subsequent proceeding in MM Docket No. 97-225, we modified the Station KIKM, Channel 269C1 license at Denison-Sherman to specify operation on Channel 269C at Azle, Texas. 13 FCC Rcd 18920 (1998). That action is now final. Unlike the Channel 269C1 allotment at Denison-Sherman in this proceeding, the Channel 269C allotment at Azle is a fully spaced allotment with respect to the former Channel 270C2 allotment at Paris, Texas, and the former Channel 272A allotment at Madill,

²As such, we no longer believe that Hunt Broadcasting can be considered a "person aggrieved" for the purposes of filing an Application for Review under Section 1.115(a) of the Rules.

Oklahoma. In its Memorandum in Support of Application for Review, CarePhil supports the Application for Review to the extent of Station KBUS remaining on its former Channel 270C2 at Paris. In view of the fact that this proceeding remains pending, we are able to grant the relief requested by CarePhil and return Station KBUS to Channel 270C2 at Paris.³ Along with relieving Hunt Broadcasting of an unnecessary reimbursement requirement, this action will avoid an unnecessary expenditure of resources by CarePhil in modifying its license and obviate any possible confusion in Paris resulting from Station KBUS changing its channel.

Madill, Oklahoma

6. In its Opposition to Application for Review, Landtroop, licensee of Station KMAD, argues that Hunt Broadcasting is "trying to evade the consequences of the channel modifications" that were made in response to the original Hunt Broadcasting Petition for Rule Making in this proceeding. In order to comply with the modification of its Station KMAD license, Landtroop states that it has "incurred significant expenses in expectation" of changing to Channel 273A. In this regard, Landtroop argues that we should not grant an "eleventh hour request" to modify the resolution of this proceeding based on an action in a separate proceeding.

7. We are returning Station KMAD to Channel 272A.⁴ While we are concerned about administrative finality, our Rules specifically provide for the filing of petitions for reconsideration and applications for review which can result in changing a previous action. We are also concerned about an unnecessary expenditure of resources in implementing a channel change that is no longer necessary. Station KMAD continues to operate on Channel 272A. There is no public interest benefit in now requiring Station KMAD to change to Channel 273A. On the other hand, we believe that there are public interest benefits in relieving Hunt Broadcasting of an unnecessary reimbursement requirement for any further expenditure of resources by Landtroop in modifying its license to a new channel, and obviating any possibility of public confusion from Station KMAD changing its channel.

8. As noted earlier, Landtroop has alleged that it has incurred, in reliance on the Report and Order, significant expenses in expectation of modifying its license to Channel 273A. In this connection, we note that Landtroop has filed a one-step application to upgrade Station KMAD to Channel 273C2 (File No. BPH-980421IH). We think that it is reasonable for Landtroop to be reimbursed for the expenses it incurred in good faith reliance on our Report and Order prompted by Hunt Broadcasting's initial channel change. However, any such reimbursement requirement for Hunt Broadcasting will be limited to identifiable expenses incurred by Landtroop in preparation of changing Station KMAD to Channel 273A. There is nothing in the record in this proceeding that would enable us to determine that amount or determine whether such expenditures were made in reasonable reliance on the Report and Order. At this juncture and consistent with past practices, any reimbursement amount can best be determined by good faith negotiations between the parties.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 23, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

³The reference coordinates for the Channel 270C2 allotment at Paris, Texas, are 33-45-04 and 95-24-51.

⁴The reference coordinates for the Channel 272A allotment at Madill, Oklahoma, are 34-06-24 and 96-46-30.

CommunityChannel No.

Paris, Texas
Madill, Oklahoma

230C2, 270C2, 299C2
272A

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of CarePhil Communications for Station KBUS, Paris, Texas, IS MODIFIED to specify operation on Channel 270C2 in lieu of Channel 282C2. Inasmuch as Station KBUS was licensed on Channel 270C2 and it continues to operate on at Channel 270C2 at the formerly licensed transmitter site, it will not be necessary for CarePhil Communications to submit an application to implement this modification of license.

11. IT IS FURTHER ORDERED, That pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Steve Landtroop, Inc. for Station KMAD, Madill, Oklahoma, IS MODIFIED to specify operation on Channel 272A in lieu of Channel 273A. Inasmuch as Station was licensed on Channel 272A and it continues to operate on Channel 272A at the formerly licensed transmitter site, it will not be necessary for Steve Landtroop, Inc. to submit an application to implement this modification of license.

12. IT IS FURTHER ORDERED, That the aforementioned Application for Review filed by Hunt Broadcasting, Inc. IS HEREBY DISMISSED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Logan
Chief, Policy and Rules Division
Mass Media Bureau